*Wetmore, (obiter)*, 124 N. Y. 241; *Stone* v. *Westcott,* 18 R. I. 517. The Supreme Court of the United States adopted the same rule in *Jones* v. *Green,* 1 Wall. 330. But this court completely upset this rule in *Case* v. *Beauregard,* supra, by going so far as to say that in such a case even a judgment is unnecessary. In *Sage* v. *Memphis, etc., R. R.,* 125 U. S. 361, the court was of opinion that suing out execution is unnecessary where it would be "an idle ceremony."

EVIDENCE—SUFFICIENCY OF PROOF IN ACTIONS FOR LIBEL AND SLANDER.—In an action for slander for charging the plaintiff with "living" with another man and being a "sport," *held,* that something more than a preponderance of evidence was necessary to enable the plaintiff to recover. *Sterkx* v. *Sterkx* (La. 1915), 70 So. 428.

The question as to the degree of proof required in an action for libel or slander has usually arisen upon a plea of justification where the action was brought for imputing to the plaintiff the commission of a crime. In such cases, the courts have differed as to the rule which should be applied; but by the great weight of American authority, the rule now is that all that is required of the defendant is that he establish his justification by a preponderance of the evidence and not beyond a reasonable doubt. *Hearne* v. *De Young,* 119 Cal. 670, 52 Pac. 150, 499; *Tunnell* v. *Ferguson,* 17 Ill. App. 76; *Wintrode* v. *Renbarger,* 150 Ind. 556, 50 N. E. 570; *Sloan* v. *Gilbert,* 75 Ky. 51, 23 Am. St. Rep. 708; *Ellis* v. *Buzzell,* 60 Me. 209; *Peoples* v. *Evening News Ass'n,* 51 Mich. 11, 16 N. W. 185; *Edwards* v. *Geo. Knapp & Co.,* 97 Mo. 432, 10 S. W. 54; *Bell* v. *McGinness,* 41 Oh. St. 204; *Sacchitti* v. *Fehr,* 217 Pa. St. 475, 66 Atl. 742; *Lay* v. *Linke,* 122 Tenn. 433, 123 S. W. 746. The question as to whether the plaintiff in slander cases must make his case by more than a mere preponderance of evidence does not seem often to have arisen. *D'Echaux* v. *D'Echaux,* 133 La. 123, 62 So. 597. The contention has been made in other civil cases of a so-called criminal nature, but the rule has generally been repudiated. *Welch* v. *Jugenheimer,* 56 Ia. 11, 8 N. W. 673; WIGMORE, § 2498, though something more is sometimes required in cases of fraud. *Lalone* v. *United States,* 164 U. S. 255. But see *Nelms* v. *Steiner Bros.* 113 Ala. 562, 22 So. 435. The consequences of such actions are wholly civil and in no way criminal. Where all that is required of the defendant in slander cases is that he prove the commission of the crime by a preponderance of the evidence, *a fortiori,* no greater degree of proof would be required of the plaintiff in establishing his case. The instant case follows the holding in *D'Echaux* v. *D'Echaux,* supra, and all that is said in that case which is in point is quoted in the instant case. No authorities are cited to sustain the decision. It is submitted that the rule herein announced is not in accord with the weight of American authority and that the cases *contra* express the better rule.

HUSBAND AND WIFE—CONVEYANCE BY MARRIED WOMAN.—Article 10, § 6, of the Constitution of North Carolina provides that "the real * * * property of any female * * * may * * * with the written assent of her husband be conveyed by her as if she were unmarried." Public Laws of North Caro-

lina (1911), Chapter 129, require privy examination of the wife to make the conveyance valid. Defendant, together with her husband, entered into an executory contract with plaintiff to convey her real estate. No privy examination of the wife was had. In an action against her for damages for failure to convey, *held* (two justices dissenting), that she was liable. *Warren* v. *Dail* (N. C. 1915), 87 S. E. 126.

The prevailing opinion in construing Chapter 109 of Public Laws of 1911 puts undue emphasis upon that portion thereof which reads, "every married woman shall be authorized to contract and deal so as to affect her real and personal property in the same manner as if she were unmarried," but fails to observe the latter portion of the same statute which provides that "no conveyance shall be valid unless made with the written assent of her husband * * * and her privy examination as to the execution of the same taken." The dissenting opinion points out that "the deed or contract of a married woman, charging her real estate * * * is a nullity" unless she be privily examined. *Scott* v. *Battle,* 85 N. C. 184, 39 Am. Rep. 694; *Farthing* v. *Shields,* 106 N. C. 289, 10 S. E. 998; *Council* v. *Pridgen,* 153 N. C. 443, 69 S. E. 404; *Smith* v. *Burton,* 137 N. C. 79, 49 S. E. 64. If the *feme* defendant had attempted to perform the executory contract to sell, the performance would have been a nullity. It is an anomaly that she should be held liable in damages under these circumstances.

INSURANCE—ESTOPPEL AND WAIVER OF CONDITION IN BENEFIT POLICY.—The South Carolina Code provides that where a fraternal insurance or beneficiary society has lodges, members of which are required to pay premiums to local officers to transmit the same to the general office, such local officers collecting the premiums shall be deemed agents of the general order; it also provides that no subordinate body, or any of its officers, shall have power to waive any of the provisions of the laws and constitution of the association. The constitution and by-laws of the Woodmen of the World provide that no officer of the Sovereign Camp or any Camp shall have power to waive any of the conditions on which beneficiary certificates are issued; that a member's failure to pay an assessment for over a month would work a suspension of such member; and that a member so suspended must make warranty that he is in good health before he can be reinstated. *Held,* that the clerk of a local Camp, by collecting assessments so long overdue that a suspension has resulted, may bind the society, even though the delinquent member had not made the necessary warranty. *Crumley* v. *Sovereign Camp of Woodmen of the World* (S. C. 1915), 86 S. E. 954.

The decision of the court is placed on two grounds, that the waiver of the condition precedent to the reinstatement by the agent binds the insurer, and that the insurer is estopped to deny the act of the agent and to contend that the member, who died in the interim, was suspended. The reinstatement is, in effect, a contract, which is wholly executed by the other party, and the insurer—having had the benefit of the performance of it—cannot set up its own wrong; this is, in short, an application of the doctrine of estoppel to set up an ultra vires defense. *Williamson* v. *Ass'n,* 54 S. C. 582;